



FACT SHEET

Authority to Act for Others

Adults have the right to make their own decisions, including decisions about where to live, handling funds, and medical treatment. Making decisions about long-term care is difficult and reasonable people often disagree about which option is best, but you are the one who is best able to determine what is right for you.

There may come a time when you are unable to manage your personal or financial affairs. Your ability to make or communicate decisions could be affected by a serious illness, an accident, a chronic disease, or a form of dementia like Alzheimer's disease. You have the right to appoint someone to act on your behalf. It is wise to plan ahead in the event you should become disabled. If you have not appointed someone to act on your behalf, a court may appoint someone to make your decisions.

Appointing Others to Act on Your Behalf – Advance Directives

Various documents are used to plan for times of disability. There are many advantages to using these documents. You name the person who can act on your behalf, called your agent; you decide what powers your agent will have, but you never give up your right to act for yourself. A disadvantage could be that the person you name as your agent might abuse the power that you give them or ignore your instructions. It is important, therefore, to name someone you trust and who you are certain will act in your best interest when you are unable to give them direction.

Power of Attorney

A Power of Attorney (POA) is a document in which you name an **agent** to act on your behalf. The document not only states whom you have authorized, but what your agent has authority to do. This document is commonly used for handling financial matters, such as, depositing and withdrawing money, signing checks to pay bills, or selling property. You can also use a POA to authorize your agent to assist you in carrying out your healthcare decisions, such as, arranging for in-home care, or hiring and firing healthcare workers.

A POA may authorize your agent to act immediately upon signing, or it may “**spring**” into effect at a time of disability or incapacity. You decide. But, no matter when the document goes into effect, you do not give up your autonomy. Your agent is answerable to you and can only act at your direction. When acting on your behalf, your agent should only be acting with your interest in mind. If you believe your agent is not acting in your best interest, you may revoke your POA at any time.

How long the POA stays in effect depends on the language of the document. You may choose to limit the time your agent can act or you may wish to extend it indefinitely. A general **Power of Attorney** (POA) will cease to be effective if there is a period of incapacity, a time when you are unable to give your agent instructions. A POA that specifically states that it is a **Durable Power of Attorney** (DPOA) continues to be in effect during any period of incapacity. If you want your agent to have authority to act if you are incapacitated, make sure that the document states that it is a Durable Power of Attorney.

Durable Power of Attorney for Healthcare W/patient Advocate Designation

A **Durable Power of Attorney for Healthcare** (DPOAHC) with a **Patient Advocate Designation** (PAD) is a specific type of “springing” DPOA. It allows an individual to appoint an agent to make **care, custody, and medical treatment decisions** when that person is no longer able to participate in medical treatment decisions.

The person you name as your agent is known as your **Patient Advocate** (PA). Their authority can be as broad or as narrow as you desire. You may be as specific as you want in describing the medical treatments you wish to receive or not receive, or you may grant your

PA complete discretion in making those decisions. If you have specific views on your end of life care, you may express them in the document. In addition to giving your PA authority to make medical treatment decisions, you may also give them instructions for funeral arrangements or organ donation.

Unlike other Power of Attorney documents in which you decide when it goes into effect, a Durable Power of Attorney for Healthcare with a Patient Advocate Designation **only** goes into effect when it has been determined that you are **no longer able to participate in medical treatment decisions**. State law requires that your attending physician and one other physician, or licensed psychologist, sign a statement saying that you are unable to participate in medical treatment decisions. Only when this determination has been put into writing may your PA make decisions about your medical care, and he or she is then obligated to follow your instructions as stated in your DPOAHC.

Do-Not-Resuscitate Directive

A Do-Not-Resuscitate Directive (DNR) is a document that directs medical personnel not to initiate resuscitation if they are aware of the DNR order and your heart stops beating and you stop breathing. Michigan law specifies the form that must be used, as well as signing and witnessing requirements. State law also specifies that a DNR directive is **not** effective in an institutional setting such as a hospital or nursing home. If you are admitted to a nursing home and wish that resuscitation not be initiated, you need to make sure that your wishes are known, and are included in your medical record.

Obtaining Authority to Act for Others

Sometimes a person loses the ability to make or communicate decisions without having appointed an agent or a patient advocate. Without an agent, there is no one with authority to manage your financial affairs. If you have not named a patient advocate, a healthcare provider may look to your family members for information about your medical treatment preferences. Unfortunately, family members may disagree about a loved one's wishes and it becomes difficult for healthcare providers to know what medical treatment is preferred or who has authority to make decisions. In these cases, the probate court may have to decide who has authority to make decisions for you.

Guardianship

A guardian is a person appointed by the probate court to make **care, custody, and medical treatment decisions** for an incapacitated person. The person for whom the guardian is appointed is commonly known as the **ward**. Although a guardian is required to meet with their ward and to take into consideration their preferences, there is no requirement that the guardian follow the ward's instructions. Guardianship essentially strips an individual of their rights. Because this is such an extreme action, the Probate Court can only appoint a guardian if there is clear and convincing evidence that the individual is **incapacitated** and the appointment is **necessary** to provide continuing care and supervision of the individual.

A person is incapacitated if they **lack sufficient understanding or capacity to make or communicate informed decisions**. Your decisions do not have to be a wise or good, or ones that others agree with in order to be informed. If you consider relevant information and understand the possible consequences, then your decisions are informed.

There must also be evidence that a guardian is necessary. A guardianship is considered **necessary if the benefits (goods and services) the individual needs will not be provided unless there is a court-appointed guardian**. If there is a DPOA in place or a DPOAHC it may not be necessary to appoint a guardian unless there is evidence that your agent or patient advocate is not acting in your best interest. The court should also look to see if there is a less restrictive way to assist you, such as with the appointment of a representative payee or with a protective order.

Representative Payee

Some government agencies responsible for paying benefits offer an arrangement where a person is appointed to receive funds owed to the beneficiary. The person who receives the funds on your behalf is known as a Representative Payee.

This limited form of authority can be helpful when there are limited resources to manage, such as your monthly Social Security check. There must be convincing evidence that you are **physically or mentally incapable of managing the benefits check**. The

representative payee receives the money in trust and can only use it for your benefit. They must keep records of how the money was spent and provide an accounting to the government agency every year.

Protective Order

A Protective Order is an order from the probate court authorizing the short-term management of resources or a one-time transaction on the behalf of an individual. If it becomes **necessary for you to receive a service that meets your needs** and it would be **in your best interest**, the court can issue an order. For example, if you had not authorized someone to apply for Medicaid on your behalf the court could authorize someone to make the necessary financial arrangements in order for you to qualify. The authorization is of limited duration and there is no ongoing court supervision.

Conservator

A Conservator is someone appointed by the probate court to make ongoing financial decisions and to manage the estate of a protected individual. The court can appoint a conservator if you are **unable to manage your property or financial affairs due to illness or disability** and either **money is needed for your support and care** or **your property would be dissipated without proper management**.

The conservator becomes trustee of all your property and has broad power to deal with that property. They are obligated to take into consideration your wishes and preferences and must spend funds to meet your needs for support and care. An inventory of your property will be filed with the court and the conservator must file annual reports with the court and other interested persons.

This fact sheet only provides general information about possible options. You should seek legal advice from a qualified person to help you make arrangements that best meet your needs.

For more information please call our toll free number:

1-866-485-9393